



SAN FRANCISCO DISTRICT

Agenda Item # 9

Regulatory Branch 333
Market Street San
Francisco, CA 94105-
2197

PUBLIC NOTICE

PERMIT MANAGER:
Katerina Galacatos

DATE: January 13, 2006

RESPONSE REQUIRED BY: February 13, 2006

SPECIAL PUBLIC NOTICE

PHONE: 415-977-8440

Email: k3terina.gaiacato@spd02.usace.3rmy-mil

1. **INTRODUCTION:** Please note that due to a print shop error this public notice should have been published December 13, 2005 with response required by January 12, 2006. To allow adequate time for public comment, the comment period is hereby extended to February 13, 2006. The original public notice was posted on the San Francisco District's Regulatory Branch website at <http://www.spn.usace.army.mil/regulatory/currpn.html> with a link to the draft document referenced below. The Sacramento, San Francisco, and Los Angeles Districts of the U.S. Army Corps of Engineers (USACE), along with the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG), as the Mitigation Bank Review Team (MBRT) are proposing the use of a standard template Bank Enabling Instrument (BEI) for use in the development of mitigation banks that are within, or that propose service areas within the State of California. This notice is to inform interested parties of the proposed template BEI and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

2. **PROJECT DESCRIPTION:** In response to concerns over the increasing time it takes to develop, review, and approve individual mitigation bank proposals, USACE, USFWS, and CDFG have developed the attached draft template BEI. This should help potential bank sponsors submit adequate proposals and guide the bank sponsor and Mitigation Bank Review Team (MBRT) on how to adequately review, approve and implement the bank.

The "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks" (Federal guidance) and other state and federal policy documents do not address all of the bank establishment and implementation issues that the MBRT has encountered. While mitigation banks are typically proposed to provide mitigation for projects for which mitigation has been required by different agencies, operating under different authorities, there has not been clear guidance as to how to integrate these requirements into a combined BEI. Additionally, the defacto requirement to negotiate each BEI separately, without a standardized template, has been unnecessarily time consuming and uncertain for private mitigation bank proponents.

To resolve these issues, USACE, USFWS, and CDFG have committed to establishing a combined and coordinated approach to mitigation banking by developing a single template BEI for application throughout the State of California. The intent is that this template will serve to add consistency to the approval process for mitigation banks and ensure a viable private mitigation banking market. In most areas, changes in the template will reflect existing regulations, policies, and guidance. In areas where existing regulations, policy, and guidance do not address the issues, the draft template BEI represents the way in which USACE, USFWS, and CDFG propose to implement and provide consistent approach to future BEIs.

It is expected that, with a finalized template BEI, agencies and mitigation bankers will be able to proceed with confidence that our regulatory needs are met and the information used in the bank review and approval process is adequate, predictable, consistent, and not subject to extensive unnecessary negotiation.

There is more work to be done on supporting documents and next steps will be to develop a single checklist of items, exhibit details, and templates to include with the BEI template and bank proposal submittals.

3. AUTHORITY: This template BEI is proposed to be used in the development of mitigation banks which are being developed to provide mitigation for impacts from projects which have received authorizations to proceed under the authorities of Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States. Additionally, this template BEI is proposed to be used when those mitigation banks would also propose to provide mitigation for projects which have been required to provide mitigation by USFWS and/or CDFG.

4. EVALUATION FACTORS: The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to finalize the proposed BEI template.

5. SUBMITTING COMMENTS: Written comments, referencing Public Notice 200500420, must be submitted to the office listed below on or before January 12, 2006: Tom Cavanaugh, Project Manager, US Army Corps of Engineers, Sacramento District, Sacramento Valley Office, 1325 J Street, Room 1480, Sacramento, CA 95814-2922, e-mail: Thomas.J.Cavanaugh@usace.army.mil

Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact Tom Cavanaugh, (916)557-5261, Thomas.J.Cavanaugh@usace.army.mil